BILL NO. S-94-06-20

SPECIAL ORDINANCE NO. S-55-94

AN ORDINANCE approving Contract #6333-94, **COLDWATER ROAD: COLISEUM BLVD. TO COLLINS ROAD** between **BROOKS CONSTRUCTION CO., INC.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **#6333-94, COLDWATER ROAD: COLISEUM BLVD. TO COLLINS ROAD** by and between BROOKS **CONSTRUCTION CO., INC.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

> the improvement of Coldwater Road from Coliseum Blvd. to Collins Road by adding right turn lane for southbound traffic including pavement, curbs, sidewalks, street lighting, traffic signals, storm sewers and pavement markings;

involving a total cost of Three Hundred Nine Thousand Five Hundred Fifty-Six and 89/100 Dollars, ($309,556.89).

SECTION 2. Prior Approval has been requested from Common Council on **MAY 10,** 1994. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay

J. Timothy McCaulay, City Attorney

**CONTRACT NO. 6333-94**
**COLDWATER ROAD: COLISEUM BLVD. TO COLLINS ROAD**

THIS CONTRACT made and entered into in triplicate this 15th day of June, 1994, by and between BROOKS CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

**ARTICLE 1: SCOPE OF WORK**

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

TO IMPROVE COLDWATER ROAD FROM COLISEUM BLVD. TO COLLINS ROAD BY ADDING RIGHT TURN LANE FOR SOUTHBOUND TRAFFIC INCLUDING PAVEMENT, CURBS, SIDEWALKS, STREET LIGHTING, TRAFFIC SIGNALS, STORM SEWERS AND PAVEMENT MARKINGS.

All according to Res. No. 6333-94 and do everything required by this contract and the other documents constituting a part hereof.

**ARTICLE 2: THE CONTRACT SUM**

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of **$309,556.89.** In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

**ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE**

The CONTRACTOR may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure Contractor's compliance with the E.B.E. Rider attached to the contract. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of $100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider.

**ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection and will direct the **Contract Compliance Department** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works.** Likewise, when the **Contract Compliance Department** determines that the CONTRACTOR'S efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the **Board of Public Works** through an **E.B.E. Compliance Final Report.**

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a final certificate stating the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that the CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of $100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contact amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

**ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award or any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

**ARTICLE 6: NONDISCRIMINATION OF LABOR**

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

**ARTICLE 7: PREVAILING WAGE SCALE**

The CONTRACTOR agrees to pay, and also requires of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

**ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Resolution No. 6333-94.
b. Instructions to Bidders for Resolution No. 6333-94.
c. Contractor's Proposal Dated 20 APRIL 1994.
d. Ft. Wayne Street Engineering Drawings accompanying bid packet for Resolution No. 6333-94.
e. Supplemental Specifications accompanying bid packet for Resolution No. 6333-94.
f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Right-of-Way Cut Permit.
l. Comprehensive Liability Insurance Coverage.
m. Minority/Female Employment Hourly Utilization
n. E.B.E. Rider

**ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

**ARTICLE 10: INDEMNITY**

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

**ARTICLE II: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Public Works of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

**ARTICLE 12:**

The CONTRACTOR agrees to complete the work specified in the contract by **1 AUGUST 1994** after having been ordered by the OWNER to commence work under this contract.

**ARTICLE 13: COUNCILMANIC APPROVAL**

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to

approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

**ARTICLE 14:**

This contract is governed by Laws of the State of Indiana.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR:
BROOKS CONSTRUCTION CO., INC.

BY: _____
Vice President

BY: _____
Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS

_____
Charles E. Layton
Director of Public Works

_____
C. James Owen
Member

_____
Katherine A. Carrier
Member

ATTEST:
_____
~~Patricia J. Crick~~, Clerk

**ACKNOWLEDGMENT**

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 6th day of June, 1994, personally appeared the within named Andrew F. Brooks/Dawn E. Wilson who, being by me first duly sworn upon their oaths, say that they are the Vice President and Secretary of Brooks Const. Co., Inc. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of _____ for the uses and purposes therein set forth.

Sara R Boardman
NOTARY PUBLIC

Sara R. Boardman
(Type or print name of notary)

MY COMMISSION EXPIRES: 3-22-95

**ACKNOWLEDGEMENT**

STATE OF INDIANA )
) SS:
COUNTY OF ALLEN )

BEFORE ME, a Notary Public, in and for said County and State, this 20 day of June, 1994, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; ~~Charles E. Layton,~~ C. James Owen and Katherine A. Carrier, members of the Board of Public Works, City of Fort Wayne, Indiana; and * ~~Patricia J. Crick,~~ Clerk of the Board of Public Works, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

* Thelma A. Morris
Clerk Bratem

Carolyn S. Newport
NOTARY PUBLIC

Carolyn S. Newport
Type or Print Name of Notary

My Commission Expires: 6-21-95

Approved by the Common Council of the City of Fort Wayne on day of _____, 19_____.

Special Ordinance No._____.

## E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and _____ BROOKS CONSTRUCTION CO., INC. _____, hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the COLDWATER ROAD: COLISEUM BLVD. TO COLLINS ROAD _____ which project was bid under Resolution Number 6333-94 ; and

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and

WHEREAS, Owner has, pursuant to Executive Order 90-01 (as amended 12/19/91), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and

WHEREAS, said Executive Order states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts

taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. E.B.E. Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of $100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver: If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % E.B.E. goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se. In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 15th day of June, 1994.

By: C F Brooks
Contractor

By:
Board of Public Works

Charles E. Layton

C. James Owen

Katherine Carrier

ATTEST:

Helena A. Morris
~~Patricia J. Crick~~, Clerk Protem

Read the first time in full and on motion by Lunsey, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 6-28-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Bradbury, seconded by _____, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

| | AYES | NAYS | ABSTAINED | ABSENT |
|---|---|---|---|---|
| TOTAL VOTES | 5 | | | 4 |
| BRADBURY | ✓ | | | |
| EDMONDS | | | | ✓ |
| GiaQUINTA | ✓ | | | |
| HENRY | | | | ✓ |
| LONG | ✓ | | | |
| LUNSEY | | | | ✓ |
| RAVINE | ✓ | | | |
| SCHMIDT | ✓ | | | |
| TALARICO | | | | ✓ |

DATED: 7-12-94.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) ~~(ZONING)~~ ORDINANCE ~~RESOLUTION~~ NO. S-55-94. on the 12th day of July, 1994

ATTEST: (SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

David C Long
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of July, 1994, at the hour of 11:00 o'clock A, M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 13th day of July, 1994, at the hour of 11:30 o'clock A M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE: Contract #6333-94, Coldwater Road: Coliseum Blvd. to Collins Road

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract 6333-94 is for the improvement of Coldwater Road from Coliseum Blvd. to Collins Road by adding right turn lane for southbound traffic including pavement, curbs, sidewalks, street lighting, traffic signals, storm sewers and pavement markings. Brooks Construction Co., Inc. is the contractor. **Prior Approval received 5/10/94.**

EFFECT OF PASSAGE: Project can be completed.

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $309,556,89
(Redevelopment Commission funded)

ASSIGNED TO COMMITTEE:

D 2-94-06-20

BILL NO. S-94-06-20

REPORT OF THE COMMITTEE ON
PUBLIC WORKS
ARCHIE L. LUNSEY - JANET G. BRADBURY - CO-CHAIR
CLETUS R. EDMONDS
SAMUEL J. TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) (RESOLUTION) approving Contract #6333-94, COLDWATER RAOD: COLISEUM BLVD. TO COLLINS ROAD BETWEEN BROOKS CONSTRUCTION CO., INC. AND the City of Fort Wayne, Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (RESOLUTION)

| DO PASS | DO NOT PASS | ABSTAIN | NO REC |
|---|---|---|---|
| Janet Bradbury | | | |
| Sam Talarico | | | |
| Cletus R. Edmonds | | | |

DATED: 7-12-94.

Sandra E. Kennedy
City Clerk